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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 99 039 50029

Office: VERMONT SERVICE CENTER

Date:

MAY 10 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and
Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

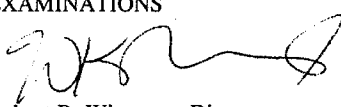
This is the decision in your case. All documents have been returned to the office which originally decided your case.
Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with
the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state
the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must
be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such
a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other
documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to
reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is
demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required
under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected and the case will be remanded for further action.

The petition was denied based upon the director's finding that the petitioner had failed to respond to the Service's notice of intent to deny.

On appeal, the petitioner claimed that a response to the intent notice was submitted. The petitioner also provided the Service with a copy of the previously submitted documentation, as well as a postal return receipt signed by a Service employee, indicating that the petitioner's documents were received on May 11, 1999, less than 30 days after the intent notice was issued.

Service regulations at 8 C.F.R. 103.2(15) state, in part:

A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. 103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petitioner with a new fee. . . . Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.

As the director failed to consider the documentation submitted by the petitioner in response to the intent notice, this case will be remanded, pursuant to the above regulation, and the appeal will be treated as a motion to reopen.

ORDER: The appeal is rejected. The case is remanded for further action and consideration consistent with the foregoing.